IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.717 OF 2004
IN
SUMMARY SUIT NO.4356 OF 2000

Canara Bank .. Plaintiffs

Vs.

Mr.Parokaran Ettyara Thomas and anr...Defendants

Mr.R.C.Dubey i/b Sanjeev Kanchan for the plaintiffs

Mr.D.M.Manoharan a/w S.L.Mhatre for defendant no.2

CORAM : S.U.KAMDAR, J
DATED : 21ST SEPTEMBER, 2005

P.C.:

1. The present suit is filed for the balance amount of Rs.4,10,979/- for hire charges agreement between plaintiffs and defendants. Defendant no.2 has raised three defences. The first contention is that guarantee letter dt.6.10.95 is not signed by the defendants. However, the learned counsel for the plaintiffs has produced original guarantee letter dt.6.10.95 which is duly executed by defendant no.2. In that view of the matter, there is no substance in the first contention.

2. The second defence is that the claim is

barred by law of limitation. Guarantee is dt. 6.10.95 and acknowledgement is of 1999. However, the aforesaid contention is equally without any merits because in para 6 of the plaint it is mentioned that defendant no.1 as principal debtor has also executed acknowledgment of liability of 10.11.97. In that view of the matter, suit claimed is within time.

3. The third defence is vehicle is sold at much lesser price then the market price available. The said defence is equally without any merits as there is no material in support of the aforesaid contention. However, with a view to given an opportunity to the defendant no.2 to defend the suit, I direct the defendant no.2 to deposit a sum of Rs.4 lakhs within 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred

to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

4. As far as defendant no.1 is concerned, there is no affidavit in reply to the Summons for Judgment. In that view of the matter, suit is decreed as against defendant no.1 as prayed. Suit as well as summons for judgment is disposed of as against defendant no.1.